IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10216 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M B PADIYA

Versus

STATE OF GUJARAT

Appearance:

MS MAMTA R VYAS for Petitioner

Mr.Digant P. Joshi, Assistant Govt. Pleader for

M/S PATEL ADVOCATES for Respondents nos.1 and 2.

RULE SERVED for Respondent Nos.3 & 4

MR BHARAT T RAO for Respondent No. 5

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 18/04/2000

ORAL JUDGEMENT :

The present petition is filed by the primary school teacher. The petitioner joined service as a primary school teacher in 1965. In 1989, Contributory Provident Fund scheme was introduced in the respondent school. The petitioner is due for retirement on his reaching the age of superannuation on 31.5.2000. The petition is filed mainly on the basis that this Court (Coram : S.K. Keshote, J.) had decided Special Civil Application No.3635 of 1982 by an order dated 18.1.1997. While dealing with the matter, the Court has observed as

under in para 13:

"The matter is squarely covered by the decision of the Supreme Court in the case of State of Maharashtra v. Manubhai Pragaji Vashi (supra). The action of the respondent State of not extending the benefit of pension scheme to the teachers of recognised aided private primary school, though such benefit has been extended to the teachers of private secondary and higher secondary schools and colleges which are recognised and aided, is patently discriminatory and based on no material. The respondent has not discharged the burden of proof caste on it to sustain the differential treatment meted out to teachers of recognised private primary school receiving grant in aid. It is patent that likes have been treated unlike without proper justification or reason and this class of persons have been singled out for hostile discriminatory treatment. Disparity in the service conditions, in not affording the benefit of pension scheme to the teachers of recognised and aided private primary schools is discriminatory and requires to be set right."

2. In the present case also, Mr.Digant P.Joshi, the learned Assistant Govt. Pleader appearing for the respondents is not able to point out any distinguishing feature of the present case to show as to how the said judgement of this Court is not applicable to the present case. Hence this petition is allowed. Mr.Joshi for the respondents, however, points out that against the said judgment of the learned Single Judge of this Court, an appeal being Letters Patent Appeal No.788 of 1998 is filed and is pending. That is no ground for not following the judgement of this Court, when no orders are pointed out to have been obtained by the respondents in an appeal filed in 1998.

3. In the result, this Special Civil Application is allowed. The action of the respondent, State of Gujarat of not giving the benefit of pension to the teachers of recognised aided private primary schools is declared ultra vires the Articles 14 and 16 of the Constitution of India. The respondent, State of Gujarat is directed to extend benefit of pension to the teachers of the recognised aided private primary schools in the State of Gujarat. The petitioner's claim shall be worked out within a reasonable time as the petitioner is reaching the age of superannuation by 31.5.2000. However, said

working shall not take more than six months from the date of receipt of writ of this Court and thereafter the petitioner shall be given the benefit of pension within next three months. However, it is made clear that in case the petitioner was a member of Provident Fund scheme, the petitioner shall refund to the State the share of contribution of the employer, if any, together with interest. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

(Ravi R. Tripathi, J.)

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